

Senate Bill 139

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 44-14-32 of the Official Code of Georgia Annotated, relating to the use of parol evidence to prove an apparent deed is a mortgage, so as to delineate the factors to be considered in determining when an instrument of conveyance shall be held to be an equitable mortgage; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 44-14-32 of the Official Code of Georgia Annotated, relating to the use of parol evidence to prove an apparent deed is a mortgage, is revised to read as follows:

"44-14-32.

~~A deed or bill of sale which is absolute on its face and which is accompanied with possession of the property shall not be proved, at the instance of the parties, by parol evidence to be a mortgage only unless fraud in its procurement is the issue to be tried.~~ An instrument of conveyance which purports on its face to be a deed, or a series of contracts which may include a deed of conveyance, a lease, or a right of repurchase, shall be held to be an equitable mortgage when the evidence demonstrates that the essential transaction is to transfer an interest in real property as security for the performance of an obligation. The factors relevant to the determination of whether, at law and in equity, a transaction shall be deemed to be an equitable mortgage include, but are not limited to:

(1) The adequacy of the consideration;

(2) The retention of possession by the prior owner;

(3) The representation of all parties by legal counsel;

(4) The existence of indebtedness that was in default prior to the transaction;

(5) The relative size of the debt in default to the fair market value of the property; and

(6) The avoidance of the equity of redemption.

26 If a deed that is absolute on its face, or a series of contracts taken collectively, is found to
27 be an equitable mortgage, the rights of the transferee shall be as the holder of a mortgage
28 at law securing only such indebtedness as is judicially determined."

29 **SECTION 2.**

30 This Act shall become effective upon its approval by the Governor or upon its becoming law
31 without such approval.

32 **SECTION 3.**

33 All laws and parts of laws in conflict with this Act are repealed.